IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO: 3778 of 2005

Between:

Paila Chidambaram, S/o.Vijay Kumar, rep. by his next friend and Guardina, Hanumanthu Gopala Rao @ Kodandam, S/o.Chitteyya, being the maternal grand father of the minor petitioner, Railway employee, Qr.No.SQ NS, C/1, unit No.3, Kharagpur (Midnapur Dist.) West Bengal Pin:721301.

... PETITIONER

AND

1 Paila Vijay Kumar, S/o.Ramana Rao, being Mentally invalid

rep.by his next friend and guardian paila Ramana Rao,

S/o.Lakshminarayana,Cultivation, R/o.Peddabanapuram

(Village),Nandigam Mandal Srikakulam District.
2 Paila Ramana Rao, S/o.Lakshminarayana,

R/o.Peddabanapuram (Village), Nandigam Mandal,
Srikakulam Dist.
3 Paila Venkamma, W/o.Ramana Rao, R/o.Peddabanapuram

(Village),Nandigam Mandal, Srikakulam Dist.
4 Union of India rep.by its Secretary Military & Armed Forces,

New Delhi.
5 Commanding officer, E.M.E.Depot Branch, Secunderabad-21.
6 The officer-in-Charge, E.M.E.Records, Secunderabad-21 7 The State Bank of India, palasa Branch, Srikakulam District,

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order, or direction, more particularly one in the nature of a writ of Mandamus directing the Respondents 4 to 7. i) To pay atleast half of the monthly pension payable to the 1st Respondent towards his maintenance, education and welfare; ii) To pay atleast half of the retirement benefits for whatever the 1st respondent is entitled to be retained in a Bank deposit for the benefit of the minor; iii) To directing the Respondents 4 to 7 not to remit any pensionary or retirements benefits either to the 1st respondent or to his account unless he is found to be medically fit to operte on is Bank A/C on his own volition, and to grant such other or further reliefs which the Hon'ble court may be pleased to deem fit, just and necessary in the circumstances of the case.

Counsel for the Petitioner:MR.D.RAMALINGA SWAMY

Counsel for the Respondents 4 to 6 : MR.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for Respondent No.7: Mr.Deepak Bhattacharjee

The Court at the stage of admission, made the following :

ORDER:

This writ petition is filed seeking a writ of *Mandamus* for the following reliefs:

1. To pay atleast half of the monthly pension payable to the 1st respondent towards his maintenance, education and welfare;

2. To pay atleast half of the retirement benefits for whatever the 1st respondent is entitled to be retained in a Bank deposit for the benefit of the minor;

3. To direct the respondents 4 to 7 not to remit any pensionary or retirement benefits either to the 1st respondent or to his account unless he is found to be medically fit to operate on his bank account on his own volition.

2. Learned counsel for the petitioner Mr.D.Ramalinga Swamy contended that the petitioner being a minor has a right to claim maintenance from his parents and the first respondent, who is discharged from military service on the ground of mental illness and was unable to discharge his duties and therefore, the right of the petitioner may be protected.

3. On the other hand, learned Standing counsel appearing for the respondents contended that the remedy of the petitioner is to file a suit for maintenance or a petition under Section 125 Cr.P.C., but not before this Court because disputed questions of fact are involved.

4. There cannot be any dispute that the alternative remedy is not a bar for this Court in entertaining writ petition especially under three circumstances, namely when there is violation of principles of natural justice, secondly when the authority who has no jurisdiction passed any order and thirdly any fundamental right has been infringed. This is not one such case so as to invoke jurisdiction. The remedy of the petitioner is to file a suit for maintenance or an application under Section 125 Cr.P.C.

5. The writ petition is devoid of merits and it is accordingly dismissed. There shall be no order as to costs.

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K.C.BHANU, J

Dated : 02.03.2005

To

1 The Secretary Military & Armed Forces, Union of India

New Delhi.
2 Commanding officer, E.M.E.Depot Branch, Secunderabad-21.
3 The officer-in-Charge, E.M.E.Records, Secunderabad-21 4 The State Bank of India, palasa Branch, Srikakulam District,

5 2 CD copies.